IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

MFA.No. 1200 of 2001(D)

OPMV.399/1994 OF ADDL.MOTOR ACCIDENTS CLAIMS TRIBUNAL, MAVELIKKARA
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APPELLANT/PETITIONER

K.P. VARGHESE JOHN,
JYOTHIS, CHETTIKADU MURI,
PATHIRAPPALLY, ALAPPUZHA.

BY ADV. SRI.B.SURESH KUMAR
SMT.C.G.PREETHA

RESPONDENTS/RESPONDENTS
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1. **P.K. JOY, PAYAPPAN HOUSE,**
PARAYARAM P.O., THRISSUR.

2. **T.K. RAJAN, KOMATHERIL HOUSE,**
ALUMPEEDIKA, OACHIRA.

3. **THE NATIONAL INSURANCE CO. LTD.,**
BRANH OFFICE, KAYAMKULAM.

BY ADV. SRI.MATHEWS JACOB --- R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. Koshy & K.Hema, JJ.

M.F.A.No. 1200 of 2001

Dated this the 7th day of December, 2007

Judgment

Koshy,J.

Appellant sustained serious injuries in a motor accident on 18.11.1993. The appellant was travelling in a car bearing registration No.KL-2 1514 from north to south along the Alappuzha-Kollam national highway and when the car reached south of Mukkada junction near Krishnapuram, a Mitsubishi lorry bearing registration No.KEQ 2583 driven by the first respondent came from the opposite direction along the wrong side of the road in a rash and negligent manner and hit the car. The appellant sustained very serious injuries in the accident. The appellant was taken to the Government Hospital, Kayamkulam immediately after the accident and considering the seriousness of the injuries he was referred to the Medical College Hospital, Alappuzha where he was treated as an inpatient for two weeks. He claimed a compensation of Rs.Six lakhs under various heads. The tribunal awarded only a compensation of Rs.32,750/-. This appeal is filed only questioning the quantum of compensation.

2. At the time of accident, the appellant was aged 49 and he was the Managing Director of Quilon Co-operative Spinning Mills, Chathannur. Ext.A15 wound certificate shows that the appellant had sustained fracture lower end radius and posterior dislocation of right hip. Ext.A18 disability certificate shows that there is 15% permanent disability. He was in plaster cast for 45 days. Ext.A17 salary certificate shows that his monthly income at the time of accident was Rs.8,445.75 including allowance at the time of accident. The tribunal awarded Rs.20,000/- towards disability as no data was produced to show that he sustained any pecuniary loss. His employment was not affected. The tribunal also noticed that 15% disability assessed was on the high side considering the injuries sustained by him. He continued as the Managing Director of the company after the accident for five years. Thereafter, he continued his job in other companies. He was a Chartered Accountant. At the time of accident, he was working on contract basis. He had applied for extension of his term for two years each after the accident and that was granted. We are of the opinion that since he continued his employment and the accident did not affect his earning power, Rs.20,000/- awarded for disability needs no interference, but, he was on plaster cast for about 45

days. The tribunal did not award any amount towards loss of actual earning as proof regarding period of absence was not produced. Since there was a leg fracture and dislocation of hip and he was in plaster cast for about 45 days, we are of the opinion that he had not been able to attend the office for at least two months. Even if he has taken leave for that period, he lost encashment facility. Therefore, he is entitled to two months' wages for actual loss of earning during the period of treatment and we assess the same at Rs.15,000/- for two months (basic plus DA). The medical bills were reimbursed by the company. Therefore, no medical reimbursement was granted. We are of the opinion that just and reasonable compensation was granted under other heads. The above additional amount of Rs.15,000/- over and above the amount decreed by the tribunal should be deposited by the third respondent insurance company with 7.5% interest from the date of application till its deposit. On deposit of the amount, appellant is allowed to withdraw the same.

J.B.Koshy
Judge

K. Hema
Judge

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 1200 of 2001

Judgment

Dated:7th December, 2007